

# DEED OF CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by **LAURA LEE BROWN and STEVE WILSON**, her husband, having an address at 7701 U. S. Highway 42, Louisville, Kentucky 40241 (collectively, “Grantor”), in favor of **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, having an address at 527 W. Jefferson Street, Louisville, Kentucky 40202 (“Grantee”).

## WITNESSETH:

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property in Jefferson County, Kentucky, more particularly described in the legal description attached as **Exhibit A** hereto, and shown on the plat attached as **Exhibit B** hereto, both of which are incorporated herein by this reference (the “Property”);

**WHEREAS**, the Property possesses conservation values of importance to Grantor, the people of Jefferson County, and the people of the Commonwealth of Kentucky, which, if preserved, will yield significant public benefits, including the protection of a natural plant and wildlife habitat, and the preservation of open space and forestland for the scenic enjoyment and environmental benefit of the general public (collectively, “Conservation Values”);

**WHEREAS**, Grantee is a political subdivision of the Commonwealth of Kentucky and a qualified organization under Sections 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Internal Revenue Code”);

**WHEREAS**, Grantee is authorized to accept conservation easements as required to retain and protect natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest or open-space use, protecting natural resources, and to preserve the historical, architectural, archaeological, or cultural aspects of real property in Kentucky and is qualified to accept such easements under Section 170(h) of the Internal Revenue Code;

**WHEREAS**, the grant of a conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and the Conservation Values and significance of the Property;

**WHEREAS**, the grant of a conservation easement on the Property by Grantor to Grantee shall assure, in particular, that the natural, scenic, forested, and open-space character and qualities of the Property will be conserved and maintained;

**WHEREAS**, the grant of a conservation easement on the Property will serve the clearly delineated governmental policies of Kentucky Revised Statutes 382.800 *et seq.* to retain or protect “natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use” and for “protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property”;

**WHEREAS**, the preservation of the Conservation Values of the Property will assist in the accomplishment of Cornerstone 2020, adopted and approved by Louisville and Jefferson County Planning Commission on June 15, 2000, all of which are of great importance to Grantor,

Grantee, the people of Jefferson County, Kentucky and the people of the Commonwealth of Kentucky in that it will, among other things:

- (a) Minimize the impact of changing land use on natural features and ecosystems;
- (b) Protect, to the extent possible, wildlife sanctuaries, wetlands, major forested areas, nature preserves, publicly owned parks, unique natural areas and other areas with significant landscape features;
- (c) Preserve through voluntary measures, such as outright public acquisition, conservation easements and scenic easements, privately owned open space, unique natural areas and other landscape features determined to be of community-wide significance;
- (d) Encourage programs that help support landowners who wish to maintain or establish agricultural operations in Louisville and Jefferson County;
- (e) Encourage the preservation of significant farmland through public acquisition or voluntary land protection strategies for land owners;
- (f) Identify and preserve riparian corridors and woodlands;
- (g) Preserve and enhance significant habitat for wildlife species;
- (h) Adopt a management philosophy that encourages natural resource stewardship; and develop and implement appropriate regulatory and non-regulatory mechanisms and design standards to protect important scenic and historic resources and visual quality of life.

**WHEREAS**, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, of even date herewith, a complete copy of which is on file in Case No. 22-2007-08 at the offices of Louisville Metro Planning and Design Services, and a duplicate copy is located in the Louisville Metro Office of Historic Preservation and Archives, consisting of reports, maps, photographs, and other documentation (the “Baseline Documentation”), that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant, all of which is incorporated herein by this reference;

**WHEREAS**, Grantor intends the Conservation Values of the Property to be preserved and maintained by this Easement, in perpetuity, and that the continuation of land use patterns, existing at the time of this Easement and so identified in the Baseline Documentation shall not be permitted to impair or interfere with those values;

**WHEREAS**, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a conservation easement on the Property, pursuant to the Kentucky Revised Statutes Sections 382.800 through 382.860 and the terms of this Easement;

**WHEREAS**, Grantee agrees by accepting this Easement, that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property;

**WHEREAS**, Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

**WHEREAS**, because the Property is located within the Louisville Metropolitan Statistical Area as defined by the Office of Management and Budget and therefore meets the requirements of Section 2031(c) of the Internal Revenue Code (specifically, Subsection 2031(c)(8)(A)(i)(1) thereof), the Property qualifies for the benefits of said Section 2031(c) as of the effective date of this grant;

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Internal Revenue Code and the laws of the Commonwealth of Kentucky, and in particular KRS 382.800 et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property, together with all unreserved development rights associated with the Property, of the nature and character and to the extent hereinafter set forth (“Easement”).

**1. Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its existing condition as documented in the Baseline Documentation of the Property on file in the office of Grantee, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

**2. Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the Conservation Values of Property;

(b) To enter upon the Property at reasonable times, at least once per year, in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor’s use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

(d) Any and all development rights now or hereafter associated with the Property, including, without limitation, all rights, however designated, that may be used pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, or any similar development variable on or pertaining to the Property or any other property. The parties agree that the development rights so conveyed are hereby terminated and extinguished

and may not be used on or transferred to any portion of the Property as it is now or hereafter may be bounded or described.

**3. Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Except as reserved under Section 4, without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) The legal or *de facto* division, subdivision, or partitioning of the Property;
- (b) The use, exercise, or transfer of development rights on or to the Property. For the purposes of this subparagraph, “development rights” include, without limitation, any and all rights, however designated, now or hereafter associated with the Property or any other property that may be used, pursuant to applicable zoning laws or other governmental laws or regulations, to compute permitted size, height, bulk or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property;
- (c) Any commercial, or industrial use of or activity on the Property other than those relating to agricultural or recreational uses as permitted under Section 4 of this Easement;
- (d) The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind including, without limitation, fences, roads, parking lots, radio towers, towers for cellular telecommunications, and utility transmission lines and related facilities, above or below the ground, except as expressly permitted in Section 4 of this Easement;
- (e) Any alteration of the surface of the land, including, without limitation, filling, the excavation or removal of soil, sand, gravel, rock, peat, or sod without the prior written approval of Grantee, except as expressly permitted in Section 4 of this Easement;
- (f) Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters;
- (g) The draining, filling, dredging, or diking of any area of the Property or the cultivation or other disturbance of the soil, except for damage caused by erosion;
- (h) The alteration or manipulation of the ponds, water courses, and wells located on the Property, or the creation of new water impoundments, water courses, or wells, for any purpose other than permitted residential uses of the Property;
- (i) The harvesting, destruction or removal of trees and other natural growth on the Property, except as expressly permitted in Section 4 of this Easement;

- (j) The installation of underground storage tanks, or the processing, storage, dumping, or the disposal of wastes, trash, rubbish, vehicle bodies or parts, refuse, and debris on the Property, with the exception of water purification systems and drywells;
- (k) The placement of any signs or billboards on the Property, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use;
- (l) The construction of new roads, or the paving of any existing unpaved road or trail, except as expressly permitted in Section 4 of this Easement or with prior written approval of Grantee;
- (m) The establishment, maintenance, or operation of any commercial feedlot. As used herein, "commercial feedlot" is defined as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market;
- (n) The construction or installation of a golf course or driving range, or other commercial or non-profit recreational facility on the Property;
- (o) The use of motorized recreational vehicles on the Property, including but not limited to snow mobiles and all-terrain vehicles; and
- (p) Any unanticipated activity or use of the Property which is inconsistent with the conservation purposes of this Easement which would impair significant Conservation Values is prohibited unless such use or activity is necessary for the protection of the Conservation Values that are the subject of this Easement, in which case such use or activity shall be subject to the prior approval of Grantee as provided in Section 6.2 herein.

**4. Reserved Rights.** Grantor reserves to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 3, the following rights are expressly reserved:

- (a) Any existing buildings, structures, roads, drives, trails, paths, fences and similar improvements on the Property may be repaired, replaced and maintained;
- (b) The right to construct additions to the main dwelling located on the Property and accessory structures and improvements, all as may be

reasonably approved by Grantee in consultation with staff to the Louisville Metro Landmarks Commission, who shall be asked to comment on the appropriateness and design of the additions given the historic significance of the structures, but not to require compliance with the standards promulgated by the United States Secretary for the Interior for the preservation of historic properties;

- (c) The right to all manner of residential use and enjoyment of the buildings and grounds of the Property, including but not limited to the right to perform routine maintenance, landscaping, horticultural activities, and upkeep consistent with the purpose of this Easement;
- (d) The right to build new fences, barns and sheds necessary for farming operations on the Property, provided that such fences or structures do not obstruct the scenic view of the Property from the public right-of-way, or interfere with the open space character of the Property;
- (f) The right to maintain trees, shrubs and lawns on the Property in good condition and appearance. Grantee specifically agrees that Grantor may from time to time, without the approval of Grantee, (i) build vegetable and flower gardens on the Property, (ii) plant new trees, shrubs, and other vegetation, and (iii) undertake such landscaping of the Property as is compatible with the improvements located on the Property which may involve removal or alteration of present landscaping, including trees, shrubs, or other vegetation;
- (g) The right to selectively prune or cut trees on the Property, as necessary for fire prevention, thinning, elimination of diseased growth, control of invasive, non-native species, to control insects and disease, or to prevent personal injury or property damage, in accordance with best management practices recommended by the Kentucky Division of Forestry or its successor agency;
- (h) As permitted by law and in compliance with all applicable governmental regulations, the right to compost or store vegetative waste generated by permitted activities and uses and the right to store for removal at reasonable intervals normal and customary waste generated on the Property by permitted activities and uses;
- (i) The right to create new pedestrian trails or paths on the Property but not for use by motorized vehicles;
- (j) The right to post all or a portion of the Property against trespassing, fishing and hunting, or mowing protective buffers; and
- (k) The right to lease or grant other less-than-fee interests in all or a portion of the Property for any use permitted to Grantor under this Easement, provided that such lease or other interest is subject to the terms of this Easement.

**5. Existing Easements.** Anything to the contrary herein notwithstanding, the Property is subject to all existing easements of record prior to the date this Easement is recorded, and this Conservation Easement does not affect the rights or obligations of any such easements.

**6. Notice and Approval.**

**6.1 Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

**6.2 Grantee's Approval.** Where Grantee's approval is required under the terms of this Easement, the Louisville/Jefferson County Environmental Trust Board, or successor organization, may act on behalf of Grantee. Approval shall be granted or withheld in writing within thirty (30) days of receipt of Grantor's written request therefor. Approval may be withheld only upon a reasonable determination by Grantee or the Jefferson County Environmental Trust Board that the action as proposed would be inconsistent with the purpose of this Easement.

**7. Grantee's Remedies.**

**7.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

**7.2 Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**7.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**7.4 Emergency Enforcement.** If Grantee, in good faith, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

**7.5 Scope of Relief.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**7.6 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

**7.7 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**7.8 Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

**7.9 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**8. Public Access.** Nothing contained in this Easement grants to the public, nor shall be interpreted to grant to the public, any right to enter on the Property. However, Grantor may make the Property accessible to the public at such times and in such a manner as is determined by Grantor.

## **9. Costs, Liabilities, Taxes, and Environmental Compliance.**

**9.1 Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits



and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**9.2 Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Section 9.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this Section 9.2, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

**9.3 Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**9.4 Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge:

(a) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(b) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders;

(d) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to air, water, soil or that is in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned or transported in, on, from or across the Property;

(e) There is not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned or decommissioned, and no

underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state and local laws, regulations and requirements.

**9.5 Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor. In no case shall Grantor's liability exceed any liability created under any and all applicable laws.

**9.6 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and KRS 224.01-010 *et seq.*

**9.7 Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 *et seq.*, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and, (3) the obligations, covenants, representation, and warranties of Sections 9.1 through 9.5.

## **10. Extinguishment and Condemnation.**

**10.1 Change in Economic Conditions.** The fact that any use of the Property that is expressly prohibited by the terms hereof may become more economically valuable than uses permitted by the terms hereof, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Section 10.2 hereof. In addition, the inability of Grantor, its successors or assigns, to conduct or implement any or all of

the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 10.2 hereof.

**10.2 Extinguishment.** Grantor and Grantee hereby recognize that an unexpected change in the conditions of the Property may make impossible the continued ownership or use of the Property for conservation purposes and necessitate a partial or full extinguishment of this Easement. Any such extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding in a court of competent jurisdiction.

(b) Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the percentage interest of the fair market value of Grantee's interest in the Property created pursuant to this Easement, which percentage interest shall be determined by the ratio of the value of the Easement to the value of the Property, without deduction for the value of the Easement, as set forth in Section 9.2 herein.

**10.3 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Section 9.2 herein.

**10.4 Application of Proceeds.** Grantee agrees to apply all of the portion of the net proceeds it receives from or following the extinguishment of the Easement to the conservation of other real property having cultural, natural, scenic, agricultural or open-space value and significance to the people of Jefferson County, Kentucky.

**10.5 Net Proceeds.** Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment, but shall specifically exclude any preferential claim of a Mortgagee under Section 17; provided, however, notwithstanding Section 17, no mortgagee shall be entitled to receive any portion of the net proceeds to which Grantee is entitled under Section 10.2(b).

**11. Amendment.** Amendments to this Easement shall be approved only if consistent with and in furtherance of the Conservation Values outlined herein, and only to strengthen the protections offered by this Easement, or to further preserve other purposes of this Easement and to meet changing conditions that may require an amendment or amendments consistent with this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this

Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Clerk of Jefferson County, Kentucky.

**12. Assignment.** This Easement is transferable, however Grantee may assign all or any portion of its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under applicable laws of the Commonwealth of Kentucky or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

**13. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

**14. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Ms. Laura Lee Brown  
Mr. Steve Wilson  
7701 U. S. Highway 42  
Louisville, KY 40241

To Grantee: Director  
Louisville Metro Planning and Design Services  
444 South Fifth Street, Suite 300  
Louisville, KY 40202

With Copy to: Chair, Louisville/Jefferson County Environmental Trust  
c/o Louisville Metro Planning and Design Services  
444 South Fifth Street, Suite 300  
Louisville, KY 40202

or to such other address as either party from time to time shall designate by written notice to the other. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

**15. Recordation.** Grantee shall record this instrument in timely fashion in the Office of the Clerk of Jefferson County, Kentucky, and may re-record it at any time as may be required to preserve its rights in this Easement.

**16. Existing Liens.** Grantor warrants that to the best of their knowledge and belief there are no liens or mortgages on the Property. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee, provided however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

**17. Subordination of Mortgages.** Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that the right of the Grantee to enforce the terms, restrictions and covenants created under this Easement shall not be extinguished upon foreclosure of any mortgage or any publicly or privately placed lien, regardless of date. Upon request, Grantee agrees to subordinate its rights under this Easement to the valid claims of any future mortgage holders or beneficiaries of deed of trust to the proceeds of any sale, condemnation proceedings, or insurance involving the Property, or to the leases, rents, and profits thereof, and likewise to subordinate its rights under any lien that may be created by Grantee's exercise of any of its rights under this Easement after the date of such subordination; provided that any such mortgage or deed of trust shall remain subordinated and junior to the Easement to the extent necessary to permit Grantee to enforce the purposes of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of such mortgage holder or trust deed beneficiary; and provided further that, in the unlikely event this Easement is terminated under the circumstances described in Section 10, Grantee shall be entitled to compensation in accordance with the terms of Section 10. Grantee agrees to execute any documents required to effect a subordination pursuant to this Section 17.

**18. Leases.** Grantor warrants that there are currently no lease agreements (whether written, oral, for a fixed term or month-to-month) in effect conveying any interest in the Property for use or occupation by any person.

**19. Grantee's Interest.** Grantor acknowledges that upon execution and recording of this Easement, Grantee shall be immediately vested with a real property interest in the Property.

**20. Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party requested by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any of the obligations of Grantor contained in this Easement, or otherwise evinces the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of Grantor's written request therefor.

**21. General Provisions.**

**21.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky.

**21.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Easement.

**21.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**21.4 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 11.

**21.5 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

**21.6 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

**21.7 Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**21.8 Approval.** Whenever in this Easement Grantee's approval or consent is required, said approval or consent shall not be unreasonably withheld, delayed or denied.

**21.9 Enforceability.** The invalidity of any applicable statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors, heirs and assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof.

**21.10 Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.

**21.11 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument, and shall have no effect upon construction or interpretation.

**21.12 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the record counterpart shall be controlling.

**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

**[Remainder of Page Intentionally Left Blank-Signature Page Follows]**

**IN WITNESS WHEREOF** Grantor and Grantee have set their hands on the day and year first above written.

**GRANTOR:**

\_\_\_\_\_  
Laura Lee Brown

\_\_\_\_\_  
Steve Wilson

Approved as to form:

IRV MAZE  
Jefferson County Attorney

**GRANTEE:**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

BY:\_\_\_\_\_  
Assistant County Attorney

BY:\_\_\_\_\_  
Jerry E. Abramson, Mayor



COMMONWEALTH OF KENTUCKY           )  
  ) SS.  
COUNTY OF JEFFERSON                 )

Subscribed, sworn to, and acknowledged before me by Laura Lee Brown and Steve Wilson, wife and husband, this \_\_\_\_ day of \_\_\_\_\_, 2007.

My commission expires:\_\_\_\_\_

Notary Public, State at Large  
Kentucky

COMMONWEALTH OF KENTUCKY           )  
  ) SS.  
COUNTY OF JEFFERSON                 )

Subscribed, sworn to, and acknowledged before me by Jerry E. Abramson, Mayor of Louisville/Jefferson County Metro Government, this \_\_\_\_ day of \_\_\_\_\_, 2007.

My commission expires:\_\_\_\_\_

Notary Public, State at Large  
Kentucky

This instrument prepared by:  
Timothy W. Martin  
Frost Brown Todd LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202-3363  
(502) 589-5400

## **SCHEDULE OF EXHIBITS**

- A. Legal Description of Property Subject To Easement
- B. Plat

## **EXHIBIT A**

BEGINNING in the Northeast line of Ridgeway Avenue, corner to the tract of land conveyed to William A. Burnett by Gottlieb Letterle, by deed dated August 30, 1906, and recorded in Deed Book 629, Page 256, in the office of the Clerk of the County Court of Jefferson County, Kentucky; running thence with said line of Ridgeway Avenue, South 72 degrees 55 minutes East 1185.80 feet to the center line of a strip of land conveyed to the Commonwealth of Kentucky by deed August 14, 1935, and recorded in Deed Book 1581, Page 267, in the office aforesaid; thence with the center line of said strip and an extension of said center line, North 14 degrees 9 minutes East 809.1 feet to a point in Gray's line; thence with Gray's line North 56 degrees 47 minutes West 266.94 feet to a stone, corner to Gray on the Eastwardly side of Little Goose Creek; thence with Gray's line North 6 degrees 15 minutes West 239.5 feet to a stone, corner to same; thence with same and crossing Little Goose Creek, North 15 degrees 9 minutes east 334 feet to a stone, corner to same, thence North 8 degrees 30 minutes West, 603 feet to a stone, corner to same; thence South 50 degrees 47 minutes West 564 feet to a stone, corner to same; thence South 31 degrees 58 minutes West 208 feet to a stone where once stood a hackberry corner to same; thence North 33 degrees 56 minutes West 39.24 feet to a corner of the tract conveyed to Edwin V. Strowl and wife by deed of record in Deed Book 3332, Page 324, in the office aforesaid; thence with the Southeasterly line of said Sprowl tract, South 59 degrees 47 minutes West 237.02 feet to another corner of same, and in the Easterly line of the tract conveyed to William A. Burnett by deed aforesaid; thence with Burnett's line South 21 degrees 58 minutes West 75.64 feet to a crack in a large rock corner to Burnett; thence with Burnett's line South 2 degrees 13 minutes West 188 feet to a beech; thence South 0 degrees 47 minutes east 253.80 feet to a stone; thence South 27 degrees 23 minutes West 354.12 feet to a stone; thence South 20 degrees 30 minutes West 315.50 feet to the beginning; EXCEPTING, HOWEVER, so much of the above tract is included in the deed to Commonwealth of Kentucky, dated August 14, 1935 and recorded in Deed Book 1581, Page 267, in the office aforesaid; TOGETHER WITH all appurtenant rights referred to in the deed recorded in Deed Book 1764, Page 35, in the said office.

BEING the same property conveyed to Laura Lee Brown by Deed dated February 15, 1996, of record in Deed Book 6700, Page 887, in the office of the Clerk of Jefferson County, Kentucky.

**EXHIBIT B**

**[Attach Plat]**